

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:10-CV-00484-RJC

TERENCE DEVON GARMON

v.

UNITED STATES OF AMERICA

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ORDER

**THIS MATTER** comes before the Court on Petitioner's Motion to Hold in Abeyance, (Doc. No. 26), to which the Government consents.

In Petitioner's Motion to Vacate, (Doc. No. 1), and Response to Motion to Dismiss, (Doc. No. 24), he claims he is innocent of the enhancement under 21U.S.C. § 851 based on developments in case law. The United States Court of Appeals for the Fourth Circuit previously rejected such a claim in an unpublished decision. United States v. Wheeler, No. 11-6643, 2012 WL 5417557, at \*1 (4th Cir. Nov. 7, 2012). However, the court recently found Simmons retroactive to invalidate a conviction under 18 U.S.C. § 922(g)(1), Miller v. United States, --- F.3d --- (4th Cir. 2013), and scheduled oral argument on October 31, 2013, in a case similar to Petitioner's, United States v. Brantley, No. 12-4752 (Aug. 15, 2013) (district court vacated Career Offender sentence on collateral review based on Carachuri and Simmons).

**IT IS, THEREFORE, ORDERED** that Petitioner's motion, (Doc. No. 26), is **GRANTED** and the Court will stay this matter pending the resolution of Brantley or other appellate direction.

Signed: September 3, 2013



Robert J. Conrad, Jr.  
United States District Judge

